IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 522 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?No.

2 To be referred to the Reporter or not ? No.

3 Whether their Lordships wish to see the fair copy of the judgment ? No.

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No.

5 Whether it is to be circulated to the civil judge ? No.

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ASHOK ALIAS DON & 1 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
NMR SR DIVETIA, for Appellant(s) : 1 - 2.
MR HM PRACHCHHAK APP for Opponent(s) : 1,
NOTICE SERVED for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 27/06/2006

ORAL JUDGMENT :

(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)

1. The appellants have preferred the present appeal

u/s 374 (2) of the Code of Criminal Procedure Code, 1973 and challenged the judgment and order of conviction dated 2-4-1997 passed by the learned Addl. Sessions Judge, Court No. 8, City Sessions Court, Ahmedabad City in Sessions Case No. 1 of 1996 convicting them for commission of offences punishable u/s 302 read with Section 34 of the I.P. Code and sentencing them to undergo life imprisonment.

2. The facts of prosecution case, in nut shell, giving rise to the present appeal are that on 14-8-1995 at about 2-45 in the noon, in furtherance of the common intention to commit murder of Naranbhai Kantibhai Patni, the appellants came running and appellant No. 2 i.e. Chamanbhai Ranchhodbhai Patni caught hold of Naranbhai Kantibhai Patni and appellant No.1 – Ashok @ Don Chamanbhai Patni inflicted “Rampuri” knife blows on different parts of the body of deceased Naranbhai which resulted into his death, in Saraspur area, opposite Haribhai Godani Hospital, Ahmedabad.

3. On the basis of the complaint, registered before Gomatipur Police Station, Ahmedabad as I – CR No. 160 of 1995` against the appellants offences punishable under Sections 302-114 of the I.P. Cope read with Section 135 of the Bombay Police Act were registered and investigation was started.

4. During the investigation of the offences, the

appellants were arrested on 15-8-1995 and at the end of the investigation the charge sheet was filed before the concerned Court of Metropolitan Magistrate, Ahmedabad.

5. Since the offence u/s 302 of the I.P.Code is triable by the Court of Sessions, the case was the committed to the City Sessions Court, Ahmedabad where it was registered as Sessions Case No. 1 of 1996.

6. The learned Addl. Sessions Judge, Court No.7, Ahmedabad City framed charge at exh. 2 against the appellants for the offences punishable u/s 302 and 34 of the I.P.Code read with Section 135 of the Bombay Police Act. It was read over and explained to them. The appellants pleaded not guilty to the charge and demanded trial. Therefore, the prosecution adduced the evidence. At the end of recording of the evidence the appellants were explained incriminating evidence led against them and the appellants in their further statement recorded u/s 313 of the Cri. Procedure Code, 1973 denied having committed the offence charged against them.

7. Appellant No.1 Ashok @ Don has in his further statement stated that on the date of the incident at about 2-30 noon he was repairing roof of his shed and at that time, his mother came to lodge complaint and informed him that deceased Naran had come to their house and had created trouble. Therefore, while alighting from the roof he sustained the

injuries on account of wire after which his mother lodged the complaint at the police station and went to Shardaben Hospital, Ahmedabad and thereafter, the police gave him a yadi so he went to Shardaben hospital where the police came. Therefore, he came to know that murder of Naranbhai has been committed but he was not knowing as to who had committed murder of Naranbhai. He also expressed desire to examine the witnesses, pursuant to which, learned advocate for the appellants gave an application at exh.42 before the trial court to examine the police officer of Gomatipur Police Station and the Doctor of Shardaben Hospital, Ahmedabad who treated Manekben Chimanbhai Patni. In response to the summons issued to the witnesses, the Police Officer of Gomatipur Police Station produced N.C. Case No. 449 of 1995 filed by Manekben w/o Chimanbhai at exh. 46 and the Doctor produced the medical certificate with regard to the treatment given to Manekben Chimanbhai at Exh.44.

8. Appellant No. 2 Chamanbhai Ranchhodbhai has in his further statement denied having committed the offence and stated that he had gone to his service at 7-00 in the morning and returned home at 3-30 in the noon. When he reached home his daughter informed him that Naranbhai had created trouble at the house and his wife had gone to police chowky for filing the compliant. Therefore he went to police chowky where he learnt that his wife has gone to Shardaben Hospital. Therefore he also went to the hospital. He

was arrested when he was making inquiry with his wife. No witness was examined by this appellant in his defence.

9. After hearing learned A.P.P. and the learned advocate for the accused, the learned trial Judge found the present appellants guilty for the offence punishable under Section 302 and 34 or in the alternative Section 114 of the I.P. Code and passed the order of conviction as mentioned hereinabove. The appellants have challenged the said order of conviction in the present appeal.

10. Learned advocate Mr. S.R. Divetia for the appellants submitted that the prosecution has failed to prove the case beyond doubt against the appellants. According to him, the witnesses examined by the prosecution were mainly interested witnesses who were relatives of deceased Naranbhai and therefore, their evidence should not have been relied upon. He also submitted that the evidence produced before the trial court reveals that appellant No.2 Chamanbhai caught hold of deceased Naranbhai and therefore he cannot be convicted for the offence of murder. He also submitted that there was no intention on part of the appellant No.1 - Ashokbhai to commit murder of Naranbhai and therefore the appellants could not have been convicted for the offence of murder of Naranbbai. He also submitted that the injuries found on the person of appellant No.1 – Ashokbhai have not been

explained by the prosecution and therefore the genesis of the case having been suppressed, the appellants should be acquitted. He further submitted that considering the evidence adduced before the trial court, the order of conviction is erroneous and illegal and therefore the same is required to be set aside and the appellants are required to be acquitted for the offence charged against them.

11. Learned A.P.P. Mr. H.M. Prachchhak for the respondent – State has opposed the appeal and submitted that the witnesses are independent witnesses and it is not true to say that only interested witnesses are examined. He also submitted that the evidence on record indicates that the injuries were sufficient in the ordinary course of nature to cause death of the victim and therefore conviction of the appellants u/s 302 read with Section 34 of the I.P. Code is justified. According to learned A.P.P. the prosecution has also proved the motive on the part of the appellants to commit the offence and therefore the judgment and order of conviction does not require any interference. He also submitted that the weapon used for commission of the offence was recovered and blood stains were found on the weapon which corroborates the witnesses and therefore also the order of conviction should not be interfered with and the appeal requires to be dismissed.

12. The learned advocate for the appellants and the

learned A.P.P. have taken us through the judgment and record of the case.

13. Learned advocate for the appellants mainly made two submissions namely (i) only interested witnesses have been examined and (ii) appellant No. 1 Ashok had no intention to commit the murder of Naranbhai and appellant No. 2 Chamanbhai merely caught hold of the deceased and did not inflict any injury to the victim.

14. In order to appreciate first submission made by the learned advocate for the appellants, the evidence of eye witnesses P.W. 3 Babiben Kantibhai Exh. 16, P.W. 4 Amaratben Bijalbhai Exh.17, P.W. 5 Viruben Shakarabhai Exh. 19 and P.W. 6 Lilaben Kantibhai Exh.20 are required to be considered.

15. P.W. 3 Babiben Exh. 16 who is the complainant and mother of deceased Naranbhai has stated in her deposition that when she was at cart deceased came to her cart and when they were at the lorry the appellants came running there and appellant No. 2 – Chamanbhai caught hold of her son Naranbhai and appellant No. 1 Ashokbhai inflicted knife blows on various parts of the body of the deceased. This witness has been extensively cross-examined. However, nothing substantial could be elicited to destroy her case that the appellants had assaulted her son. It appears from the cross-examination of this witness that the accused had tried to raise

different conflicting defences. However, the defence has not been successful in raising doubt in her evidence. It also appears from the cross-examination of this witness that the appellants tried to establish that deceased Naranbhai was in drunken condition on the date of the incident and had gone to the house of Virchand Jama and Rashi Sakara and created commotion. The appellants have also tried to raise defence that the deceased had picked up quarrel with the mother of the appellant No.1 – Ashok and had tried to commit rape on his mother and therefore the people from Maholla had gathered together to beat deceased Naranbhai. Looking to the trend of the cross-examination of this witness it is clear that the appellants were unable to raise any specific defence and have raised different defence at each time. The appellants have failed to dislodge the oral deposition of this witness. It may be noted that this witness is mother of the deceased. Therefore ordinarily she will not allow the real culprits to go scot-free and involve the appellants falsely in such a serious case. No reasons are shown or found to infer that this witness had any such reasons to falsely implicate the accused persons. Therefore, it is difficult to believe that this witness being mother of the deceased has tried to falsely implicate the appellants.

16. The prosecution has also produced the complaint Exh.38 before the trial Court. The complainant Babiben has in her complaint mentioned about the

time, place and role played by the appellants in commission of the offence. In her deposition exh.16 the complainant has supported the accusations made in her complaint. There is no material contradictions in her evidence. Therefore, we are unable to accept the contention that evidence of this witness P.W. 3 Babiben Exh. 16 cannot be relied on.

17. The prosecution has also examined P.W. 4 Amaratben Bijalbhai Exh. 17 who is the daughter of the complainant. This witness in her deposition has stated that she had gone at the place of the incident with tiffin and she was present when the offences were committed by the appellants. The appellants have failed to dislodge the evidence of this witness. In the cross-examination of this witness, the appellants tried to raise one more defence that on account of disputes with regard to immovable properties between Naran and the uncle of the appellants Virchand Jama the incident had occurred. It also appears from the cross-examination of this witness that the appellants tried to raise one another defence that on account of illicit relation between appellant No.1 Ashok and Lila wife of the deceased Naranbhai, false case was foisted by the complainant. Except making baseless allegations, no material was indicated by the appellants to substantiate the defence. In view of this, it is clear that the appellants have failed to dislodge the evidence of this witness. Therefore, even if this witness is related to the deceased her

testimony cannot be discarded. Defence side has failed to establish that the presence of this witness was not probable at the time of the incident. In view of this, the evidence of this witness cannot be discarded.

18. The prosecution has also examined two independent witnesses P.W. 5 Viruben Sakarabhai Exh. 19 and P.W. 6 Lilaben Kantibhai Exh. 20. Both these witnesses have supported the prosecution case. Both these witnesses have in terms stated about the role played by each of the appellants in the commission of the offence of murder of Naranbhai. It is true that P.W. 5 Viruben Sakarabhai Exh.19 has not stated about the role played by appellant No.2 - Chamanbhai. However, from the cross-examination of this witness it appears that this witness was present at the place when the incident had occurred and she had witnessed the incident. Both these witnesses have also narrated the incident in great detail. The defence was not able to indicate any reasons to conclude that the witnesses were not trustworthy. In view of this, the evidence of these witnesses cannot be discarded. Both these witnesses have supported the prosecution case in all aspects.

19. In view of evidence of these eye witnesses, it is clear that the appellants have failed to raise any suspicion about the presence of these witnesses at the time of occurrence of the incident. It is true that these two witnesses are near relatives of

deceased Naranbhai. But on reappreciation of the evidence of both these witnesses, their presence at the time of the incident appears quite natural and plausible. Other two witnesses are not related or interested witnesses. The appellants have also failed to raise doubt about their presence at the time of commission of the offence. There is no other material on record which would raise doubt about their presence at the place and time of the incident. Both these witnesses were selling vegetable near the place of the incident and therefore their presence cannot be doubted. In view of this, the submission of the leaned advocate for the appellants that the oral depositions of these witnesses cannot be accepted, has no substance. Therefore, in our considered view, the learned trial Judge was justified in relying upon oral depositions of these witnesses.

20. The prosecution has examined that P.W. 8 Dr. Vinayakrao Vasudevrao Patil Exh. 23 who had performed postmortem examination of deceased Naranbhai. This witness in his deposition has stated about the external and internal injuries found on the dead body of the deceased. He has also deposed that the internal injuries found on the dead body of the deceased were corresponding with the external injuries and the injuries were sufficient in the ordinary course of nature to cause death of the deceased. The doctor has also stated that the injuries were possible by a sharp edged weapon like

muddamal weapon Rampuri knife. It is strange that the accused have not cross-examined this witness in detail. Oral evidence of this witness has gone unchallenged on material aspects. In our considered view, relying upon the evidence of this witness, the prosecution has successfully proved that the death of the deceased was a homicidal death.

21. The prosecution has produced Postmortem Report at Exh.24 before the trial court. Column 17 of the said report indicates the injuries found on the dead body of the deceased which were as under :.

1. A stab wound is present on left side of neck at basal region just above the clavicle bone, oblique, size 3.5 x 1.5 cm. It is deep enough and going deep in neck and the chest.

2. Another stab wound is preesnt on abdomen . 5 cm. above the cubaucelities oblique . Size 4x15. cm. It is also cavity deep and going deep in abdomen cavity.

3. An incised wound is present on upper part of left ear, oblque , size 3.5 x 1.5 cm.

4. A superficial stab wound is present on left side of chest lower end in mid-clavicular point at 8th rib. Size 1.5 x 0.5 cm. It is skin deep.

5. Abrasion with bruise present at the lower

part of left side of abdomen near thigh. Size 2 x 2 cms.

6. Diffuse contusion is present on left side of back at lower most part. Size 5.5 x 5 cms. Few reddish abrasion (4)are found, in it size 1 x 1 cms.

Note : One (angle) of stab wound mentioned above is sharply cut and other is little oblige. Merging of wounds are sharply cut, thin layer of dried blood clot is present on all external injuries.

Internal injuries corresponding to external injuries No.1 :

The stab wound has sharply cut the fiosus muscles of neck thin has cut the subclavion

22. The postmortem Report indicates that internal injuries were corresponding to the external injuries found on the body of the deceased. According to the evidence of the Doctor who examined the deceased, such injuries were sufficient in the ordinary course of nature to cause death of the deceased. P.M. Report also indicates that the death of the deceased was homicidal as a result of the injuries sustained by the deceased. In view of this evidence, in our view the prosecution has proved beyond reasonable doubt that the deceased died on account of the injuries inflicted by the appellants.

23. The learned advocate for the appellants submitted that the prosecution has failed to explain the injuries found on the person of appellant No.1 – Ashok and therefore benefit of the same should be given to the appellants.

24. Appellant No. 1 – Ashok in his statement recorded u/s 313 of the Code of Criminal Procedure, 1973 has stated that he sustained the injuries while he was alighting from the roof. In view of this explanation offered by him. it is clear that appellant No. 1 - Ashok did not receive injuries during the course of the incident. Even the witnesses have not stated that the appellant No. 1- Ashok sustained injuries during the incident. Therefore, the prosecution was not required to explain the injuries sustained by the appellant No.1 - Ashok.

25. The prosecution has examined P.W. 9 Manishaben Somabhai Patel Exh. 25 who had treated appellant No.1 - Ashok. This witness has stated that on inquiry about the history of the injuries, the appellant had stated that the injuries were inflicted by the opposite party. According to this witness, out of the injuries sustained by appellant No.1 - Ashok, the injuries No. 1 and 2 were possible by sharp edged weapon and injury No. 3 was possible by hard and blunt substance. The Doctor has also opined that such injuries could be self inflicted . The injury

certificate Exh. 28 indicates that the following injuries were found on the person of appellant No.1 - Ashok :

i. Incised wound of 8 cm long on lt. upper-arm.
ii. Incised wound of 1 cm long lt. on lower-arm.

Iii. Lacerated wound on lt. side of chest.

26. History given by appellant No.1 – Ashok before the Doctor as mentioned in the said medical certificate Exh.23 indicates that appellant No.1 – Ashok was assaulted by sharp edged weapon and fist and kick blows. However, this is contrary to the explanation given by appellant No.1 - Ashok regarding his injuries in his further statement. Further, no complaint was filed by appellant No.1 Ashok against any one for causing injuries to him. Therefore, it is difficult to believe that appellant No.1 had sustained the injuries during the incident.

27. The appellants have also raised defence that deceased Naranbhai had come to the house of appellant No.1 – Ashok and he had tried to rape his mother. In order to substantiate this defence, the appellants have produced N.C. Case No.549 of 1995 at Exh.46. This N.C. Case was filed by Manekben wife of Chimanbhai Ranchhodbhai before Gomatipur Police Station against deceased Naranabhai Kantibhai Patni. This N.C. Complaint appears to have been

filed at 15-30 hours on 14-8-1995 against Naranbbai Kantibhai Patni. It is alleged in the complaint that Naranbhai Kantibhai had come to her house and had tried to pressurise her to settle the court case, but she had refused and hence said Naranbhai had given fist and kick blows. Complaint Exh. 46 is contrary to the allegation made by appellant No.1-Ashok that Naranbhai had attempted to commit rape on his mother. It is a very sorry state of affairs that in order to escape from the clutches of law, appellant No.1 – Ashok has tried to raise false defence. The appellants have time and again tried to change their defence but they have not been able to show their defence as a possibility in any manner. In our view, looking to the conduct of the appellants, it is difficult to believe that the appellants were not involved in the commission of the offence and false case has been foisted upon them.

28. The prosecution has also examined panch witnesses to prove pachnama of discovery of the weapon. The panchas have supported the prosecution case. F.S.L. Report also indicates the presence of blood stains on the weapon. The defence has not been able to raise any doubt, on this aspect. Therefore, in our view, the prosecution has proved beyond reasonable doubt use of the weapon in commission of the offence.

29. Learned advocate for the appellants submitted that appellant No. 1 – Ashok had no intention to

cause death of Naranbhai and therefore conviction should be set aside. We are unable to accept this submission.

30. Inquest panchanama Exh.32 indicates that Naranbhai had sustained several injuries. Postmortem report also indicates that there were about four external injuries on vital parts of the dead body of deceased Naranbhai. The witnesses have also stated that appellant No.1 Ashok came running at the place of the incident with knife and attacked the deceased indiscriminately. In view of this, it cannot be accepted that appellant No.1 Ashok had no intention to kill Naranbhai. The medical evidence establishes that the injuries were sufficient in ordinary course of nature to cause the death of the deceased. Therefore, Clause (3) of Section 300 of the I.P. Code will be attracted to the facts of the case and the offence committed by the appellants would be punishable u/s 302 of the I.P. Code.

31. Learned advocate for the appellants submitted that appellant No.2 – Chamanbhai had only caught hold of the deceased and except that he did not play any active role in the commission of the offence. We are also unable to accept this submission because the evidence on record indicates that the appellants came running at the place of the incident and appellant No. 2 - Chamanbhai caught hold of the deceased and facilitated appellant No.1 – Ashok to inflict injuries on the deceased who inflicted

about 7 knife blows on vital parts of the body of the deceased. Looking to this conduct of appellant No. 2- Chamanbhai, it cannot be accepted that he had played lesser role in the commission of the offence. It is held that he is equally responsible for the death of deceased Naranbhai as appellant No. 1 – Ashok could inflict the injuries only because the deceased was caught hold of by the appellant No. 2 -Chamanbhai. In view of this evidence, both these submissions cannot be accepted.

32. It is also submitted by the learned advocate for the appellants that appellant No.2 - Chamanbhai did not share the common intention with appellant No.1 - Ashok to kill Naranbhai. In our view, this submission can also not be accepted because the evidence on record indicates that both the appellants came running at the place of the incident and appellant No.1 - Ashok had Rampuri knife in his hand. Therefore, appellant No.2 - Chamanbhai who accompanied appellant No.1 – Ashok would be very much aware that appellant No.1 - Ashok had an intention to attack the deceased with knife. This is sufficient to indicate that appellant No.2 - Chamanbhai was very much aware about the fact that the weapon was to be used by appellant No. 1 – Ashok and in order to facilitate the murder of the deceased he had caught hold of the deceased. It is also significant that appellant No.2 - Chamanbhai did not try to prevent appellant No.1 – Ashok from inflicting further injures to Naranbhai. It is also

important that after the incident both the appellants ran away and could be arrested only on the next day. These circumstances clearly indicate that appellant No. 2 - Chamanbhai shared the common intention with appellant No.1 to kill Naranbhai. Therefore, this submission can also not be accepted.

33. In view of above, the appellants have failed to establish that the learned trial Judge has committed error in recording conviction of the appellants. On overall consideration of the evidence, we are of the opinion that the learned trial Judge was justified in recording the conviction of the appellants. Therefore, this appeal deserves to be dismissed.

34. For the foregoing reasons, this appeal is dismissed and the judgment and order of conviction dated 2-4-1997 passed by the learned Addl. Sessions Judge, Court No.8, Ahmedabad City in Sessions Case No.1 of 1996 is confirmed.

(A.L. Dave,J.)

(Bankim N. Mehta, J.)

/JVSatwara/